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OFFICE OF THE ATTORNEY GENERAL
SUPREME COURT BUILDING
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February 8, 1979

DEPARTMENT OF STATE A/CDC/MR
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Mr. Bruce E. Dozier, Esquire
Attorney-Advisor
Bureau of Consular Services
United States Department
of State
Room 4817
Washington, D.C. 20520

Re: PPT/FM-KESSLER, DONN
Letter of January 5, 1979

Dear Mr. Dozier:

Thank you for your letter of January 5, 1979, regarding possible burial in Virginia of identified and unidentified bodies from Jonestown, Guyana.

As I understand your question, you desire to know what documentation will be required from the Commonwealth for the Department of State to have a number of the bodies buried or cremated in Virginia. Before answering such question, let me review the facts you have presented to this Office.

At this time, the United States has a total of 913 bodies from the Jonestown tragedy at the Dover Air Force Base Mortuary in Delaware. All of the bodies which may be buried in Virginia have been prepared for burial, are hermetically sealed, and in the opinion of the mortuary officer, pose no health hazard. In addition, you have the necessary documents to transport the bodies out of the State of Delaware and have death certificates from the Government of Guyana. It is also my understanding that before disposition the inquests by the Government of Guyana will have been completed.

After a review of the pertinent statutes and discussion with David Wiecking, Chief Medical Examiner of the Commonwealth, and Deane Huxtable of the Commonwealth's Bureau of Vital Statistics, this office has determined that the requirements which must normally be fulfilled before final disposition of bodies in Virginia are: (1) Obtaining of transit permits; (2) Autopsies where violent death is suspected; (3) Filing of death certificates with the Bureau of Vital Statistics. As explained below, however, the only requirement which must be met here is that transit permits from Delaware must accompany the bodies into Virginia. In addition, autopsies may have to be performed upon the happening of certain events described below.

(1) Transit Permits

Normally, Virginia statutes require transportation permits to remove any human body from the state where death occurred in Virginia. No such permit is required, however, for transportation of a body into the Commonwealth provided that the State from which the body is being transported has issued a burial-transit permit and such permit accompanies the body. See § 32-353.22(c) of the Code of Virginia (1950), as amended.[1] Since the Attorney General of the State of Delaware has issued an opinion that you have the necessary documents to transport the bodies from Delaware, those documents should suffice to meet the requirement of § 32-353.22 of the Code, provided that they accompany the bodies into Virginia.

(2) Autopsies

Section 54-260.74 of the Code provides that no funeral director or funeral service licensed in Virginia shall remove or cremate a dead human body where there is an indication that violence or a crime caused the death unless permission is obtained from the state medical examiner or a person acting for

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[1]Section 32-353.22(c) of the Code states that:

"A burial-transit permit issued under the law of another state which accompanies a dead body or fetus into this State shall be authority for final disposition of the body or fetus in this State."

(3) Death Certificates

Section 32-353.20 of the Code requires that a death certificate shall be filed with the registrar of the district in which the death occurred. Such section, however, is limited to deaths which occur in the Commonwealth and would not apply to the bodies brought in from Guyana.[4]

Thus, in conclusion, the Department of State need not obtain a state burial transit permit to bring the bodies into Virginia, provided that the burial transit permits from Delaware or their equivalent accompany the bodies and no death certificate would have to be filed with the State Bureau of Vital Statistics. Furthermore, at the present time, no autopsy would have to be made before final disposition, although the funeral directors should seek written permission from the Chief Medical Examiner to bury or cremate the bodies before final disposition. Finally, an autopsy will have to be performed if the Commonwealth's Attorney or a judge of the circuit court where the body is to be brought requests an autopsy.

This opinion has been limited to any state requirements you would need to seek before final disposition of any of the bodies. You should also be aware, however, of several requirements which will have to be met by the funeral directors[5] before final disposition.

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[4]Section 32-353.20 of the Code provides, in pertinent part, that:

(a) A death certificate for each death which occurs in this State shall be filed with the registrar of the district in which the death occurred...

While Section 32-353.20(d) requires the medical examiner to complete and sign the medical certification portion of the certificate, when death occurred without medical attention or when an autopsy is required, such requirement would only apply to deaths occurring in the Commonwealth. In addition, it is my understanding that all states abide by the procedure that death certificates are filed only at the place where death occurred.

[5]Sections 54-260.73 and 54-260.73:1 of the Code make it unlawful for anyone other than a person licensed by Virginia to engage in the funeral service establishment to act as a funeral director or embalmer. Out-of-state licensees may, however, be granted a courtesy card to arrange funerals in Virginia. See § 54-260.70. Thus, the disposition of any of the bodies in the Commonwealth must be done through the above persons or to persons licensed in other states for a single disposition of bodies. Id.

Section 54-260.74 of the Code prohibits a person licensed to perform the practice of funeral services to accept a dead human body from any public officer[6] without first having made

> ...due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral expenses of such decedent...

If any kin are found, their directions for disposition of the decedent must be followed. Thus, in this case, the funeral directors will have to make a good-faith attempt to determine the kin of any identified bodies in order to obtain their directions for disposition before accepting the bodies. In the case of unidentified bodies, which I understand that the federal government has made exhaustive attempts to identify, the directions of the State Department or other appropriate federal agency would be followed.

In addition, in accordance with § 32-353.29 of the Code, the funeral directors will have to keep records identifying receipt, removal and delivery of the bodies and file a list of all caskets furnished and of funerals performed with the Registrar of Vital Statistics.[7]

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[6]With several exceptions not pertinent to this matter.

[7]Section 32-353.29 of the Code provides, in pertinent part, that:

> ...(c) A funeral director, embalmer, or other person who removes from the place of death or transports or is in charge of final disposal of a dead body or fetus, in addition to filing any certificate or other form required by this chapter, shall keep a record which shall identify the body, and such information pertaining to his receipt, removal, and delivery of such body as may be prescribed in regulations adopted by the State Board of Health...
>
> (e) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the Bureau of Vital Statistics a list showing thereon all caskets furnished, and of funerals performed where no casket was furnished, by the funeral director during the preceding month. Such lists shall be on forms provided by the State Registrar of Vital Statistics.
>
> (f) Records maintained under this section shall be retained for a period of not less than ten years and shall be made available for inspection by the State Registrar of Vital Statistics or his representative upon demand.

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Finally, the State Department, the funeral directors or the cemeteries involved in the disposition of the bodies should also attempt to determine whether any of the local governmental authorities where the bodies are to be disposed have any ordinances or regulations under which the disposition or holding of the bodies may be considered a nuisance.

I hope this letter answers your questions in this regard. If this office can be of any further help to you, please feel free to call on me.

Sincerely yours,

Donn G. Kessler
Assistant Attorney General

DGK/cb

cc: The Honorable Marshall Coleman
Attorney General
James E. Ryan, Jr.
Deputy Attorney General
Dave Wiecking
Chief Medical Examiner
Deane Huxtable
State Registrar

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[7]Con't.

It is my understanding from Mr. Huxtable that the information referred to in § 32-353.29(c) of the Code is contained on the form referred to in § 32-353.29(e) of the Code and the funeral directors should have copies of such forms.

him.[2] In this regard, § 32-31.19 of the Code provides that if the medical examiner or Chief Medical Examiner advises that it is in the public interest to perform an autopsy or if the Commonwealth's Attorney or the circuit court where the body is present requests an autopsy, an autopsy shall be performed by the Chief Medical Examiner or by a pathologist or toxicologist designated by him.[3]

In discussing this question with the Chief Medical Examiner, Dr. Wiecking has indicated that he does not feel that the public interest requires autopsies to be done on these bodies. It would be advisable, however, for the funeral directors who may be employed to bury or cremate the bodies to seek written permission of the Chief Medical Examiner to dispose of the bodies. In addition, you may desire to seek the opinion of the Commonwealth's Attorney and the judges of the circuit court where such bodies may be disposed of in order to determine whether they will request autopsies.

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[2]Section 54-260.74 of the Code provides, in pertinent part, that, "No person licensed for the practice of funeral service shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death nor shall a dead human body be cremated, until permission of the medical examiner, or some other duly qualified person acting in the capacity of the medical examiner, if there be no medical examiner, has first been obtained.

[3]Section 32-31.19 provides, in pertinent part, that:

> "If in the opinion of the medical examiner or the Chief Medical Examiner it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by the attorney for the Commonwealth or by the judge of the circuit or corporation court of the county or city wherein such body is, such autopsy shall be made by the Chief Medical Examiner, or by such competent pathologist or toxicologist as may be designated by the Chief Medical Examiner for the purpose. A full record and report of the facts developed by the autopsy and findings of the person making such autopsy shall be promptly made and filed with the medical examiner and in the Office of the Chief Medical Examiner..."

Emphasis supplied.